

N.C. Statutes authorizing service of process by a private process server.

1A-1, Rule 4(h)Summons – When proper officer not available. – If at any time there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court...shall appoint some suitable person who, after he accepts such process for service, shall execute such process in the same manner, with like effect, and subject to the same liabilities, as if such person were a proper officer regularly serving process in that county.

N.C. Statutes authorizing service of process by a private process server.

1A-1, Rule 4(h1) Summons – When process returned unexecuted. –

If a proper officer returns a summons or other process unexecuted, the plaintiff...may cause service to be made by anyone who is not less than 21 years of age, who is not a party to the action, and who is not related by blood or marriage to a party to the action or to whom service is to be made. Except for claims severed by a magistrate pursuant to G.S. 7A-223(b1), this subsection shall not apply to executions pursuant to Article 28 of chapter 1 or summary ejectment pursuant to Article 3 of Chapter 42 of the General Statutes.

(The underlined language was added by S.L. 2017-143.)



Interpretation of N.C.G.S. 42-29. Service of summons.

Legislative Research Commission's
Committee on Private Process Servers

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G.S. 42-29. Service of summons.

- Chapter 42 of the General Statutes which governs Landlord Tenant law.
- Article 3 which governs summary ejectment cases.
- Summary ejectment is the process by which a landlord can have a tenant removed from the leased premises, usually a simplified legal process without a trial.

G.S. 42-29. Service of summons.

The officer receiving the summons shall mail a copy of the summons and complaint to the defendant no later than the end of the next business day or as soon as practicable at the defendant's last known address in a stamped addressed envelope provided by the plaintiff to the action. The officer may, within five days of the issuance of the summons, attempt to telephone the defendant requesting that the defendant either personally visit the officer to accept service, or schedule an appointment for the defendant to receive delivery of service from the officer. If the officer does not attempt to telephone the defendant or the attempt is unsuccessful or does not result in service to the defendant,...

G.S. 42-29. Service of summons. (cont.)

... the officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service. He then shall deliver a copy of the summons together with a copy of the complaint to the defendant, or leave copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. If such service cannot be made the officer shall affix copies to some conspicuous part of the premises claimed and make due return showing compliance with this section.

G.S. 42-29. Service of summons. Sequence of events.

Step One:

The clerk of superior court issues the summons.

Step Two:

The officer receives the summons.

Step Three:

The officer **must** mail a copy of the summons and complaint by the end of the next business day or as soon as practicable to the defendant's last known address.

G.S. 42-29. Service of summons. Sequence of events.

Step Four:

The officer **may**, within 5 days of the issuance of the summons, attempt to call the defendant asking the defendant to either:

- Visit the officer to accept service, or
- Schedule an appointment for the defendant to receive service from the officer.

G.S. 42-29. Service of summons. Sequence of events.

Step Five:

If the officer does not attempt Step Four or it is unsuccessful, the officer **must** visit the defendant's home at least once within 5 days of the issuance of the summons, but at least 2 days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time when the defendant could reasonably be served.

G.S. 42-29. Service of summons. Sequence of events.

Step Six:

The officer **must** then deliver a copy of the summons and complaint to the defendant or leave copies at the defendant's house with a suitable person.

Step Seven:

If the officer cannot complete Step Six, the officer **must** affix copies of the summons and complaint to a conspicuous part of the premises and make due return showing compliance with G.S. 42-29.

G.S. 42-29. Service of summons.

The actual statutory language in **Step Five**.

“[T]he officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service.”

Interpreting G.S. 42-29. Service of summons.

- To compute timelines, look to the General Statutes for guidance.
 - **G.S. 1-593. How computed.** The time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure.
 - **G.S. 1A-1, Rule 1. Scope of rules.** These rules shall govern the procedure in the superior and district courts of the State of North Carolina in all actions and proceedings of a civil nature except when a differing procedure is prescribed by statute...

Interpreting G.S. 42-29. Service of summons.

- To compute timelines, look to the General Statutes for guidance.
 - **G.S. 1A-1, Rule 6. Time.**

(a) Computation. – In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, including rules, orders or statutes respecting publication of notices, the day of the act, event, default or publication after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

Interpreting G.S. 42-29. Service of summons.

What does “within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays” mean?

- “within five days of the issuance of the summons” language added to G.S. 42-29 by HB 899/S.L.1995-460.
- “but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays” language added to G.S. 42-29 by HB 630/S.L. 2009-246. The original language also excluded weekends, but was amended to only exclude legal holidays.

Interpreting G.S. 42-29. Service of summons.

What does “within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays” mean?

- “within five days of the issuance of the summons” language is the service of summons requirement.
- “but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays” language is the notice to the defendant requirement.

Interpreting G.S. 42-29's "at least two days prior...but excluding legal holidays" language.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- The officer must serve the summons and complaint (must complete Steps Five and Six or Steps Five and Seven) at least 2 days prior to the hearing, or if a legal holiday falls within the 2 days, then the officer must serve it more than 2 days prior to the hearing.
 - Step Five: visit the defendant's home at least once when the defendant could reasonably be served
 - Step Six: deliver summons and complaint to the defendant or leave copies with someone
 - Step Seven: affix summons and complaint to the premises and make due return showing compliance with G.S. 42-29.

Interpreting G.S. 42-29's "at least two days prior...but excluding legal holidays" language.

- The timeline is computed by applying G.S.1A-1, Rule 1 and the language in G.S. 42-29.
- Rule 1 states that "these rules shall govern...except when a differing procedure is prescribed by statute."
- G.S. 42-29 prescribes a differing procedure from that in Rule 6(a) to compute the hearing notice requirement for the defendant.
- G.S. 42-29 excludes legal holidays, but not weekends. Whereas, Rule (6) excludes both legal holidays and weekends when the time prescribed is less than seven days.

Application of G.S. 42-29's "at least two days prior...,excluding legal holidays" language not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2	January 3	January 4	January 5	January 6
January 7	January 8 Summons issued by the clerk. Day 0	January 9 Day 1	January 10 Deadline by which the officer must serve the summons. Day 2	January 11 Day 3	January 12 Answer to Complaint due Day 4	January 13

Application of G.S. 42-29's "at least two days prior..., excluding legal holidays" language involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28	December 29 Summons Issued by the Clerk. Day 0	December 30 Day 1
December 31 Deadline by which the Officer must serve the Summons. Day 2	January 1 New Year's Day Day 3	January 2 Day 4	January 3 Answer to Complaint Due Day 5	January 4	January 5	January 6

Interpreting G.S. 42.-29's "within five days of issuance of summons" language.

What does "within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays" mean?

- "within five days of the issuance of the summons" means the officer has 0-5 days to serve the summons and complaint (complete Steps Five and Six or Steps Five and Seven)
 - Step Five: visit the defendant's home at least once when the defendant could reasonably be served
 - Step Six: deliver summons and complaint to the defendant or leave copies with someone
 - Step Seven: affix summons and complaint to the premises and make due return showing compliance with G.S. 42-29.

Interpreting G.S. 42-29's "within five days of issuance of summons" language.

"[T]he officer shall make at least one visit to the place of abode of the defendant within five days of the issuance of the summons, but at least two days prior to the day the defendant is required to appear to answer the complaint, excluding legal holidays, at a time reasonably calculated to find the defendant at the place of abode to attempt personal delivery of service."

- Under the current wording and grammatical structure of the sentence, the language can be interpreted in two ways, and therefore, the timeline can be computed in two ways.
- The question is whether "excluding legal holidays" applies only to the two-day notice requirement for the defendant, or if it also applies to the five-day service of summons requirement.
- Whether or not it applies determines how the 0-5 days timeline is computed.

Interpreting G.S. 42-29's "within five days of issuance of summons" language.

Interpretation of G.S. 42-29.	Rules to Apply	Effect
If "excluding legal holidays" does apply to the "within five days of issuance of summons" service requirement	<p>Rule 1 states "these rules shall govern...except when a differing procedure is prescribed by statute..."</p> <p>G.S. 42-29 prescribes a differing procedure than Rule 6(a), so G.S. 42-29 controls the timeline.</p>	G.S. 42-29 would exclude only legal holidays and not weekends.
If "excluding legal holidays" does NOT apply to the "within five days of issuance of summons" service requirement	<p>No differing procedure is prescribed in G.S. 42-29.</p> <p>The timeline is computed by applying Rule 6(a) which states "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation."</p>	Rule 6(a) would exclude both holidays and weekends.

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under G.S. 42-29 not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2 Summons issued by the clerk.	January 3	January 4	January 5	January 6
		Day 0	Day 1	Day 2	Day 3	Day 4
January 7 Deadline by which the officer must serve the summons. Day 5	January 8	January 9	January 10	January 11	January 12	January 13

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under G.S. 42-29 involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28	December 29 Summons issued by the Clerk. Day 0	December 30 Day 1
December 31 Day 2	January 1 New Year's Day	January 2 Day 3	January 3 Day 4	January 4 Deadline by which the officer must serve the summons. Day 5	January 5	January 6

Interpreting G.S. 42-29's "within five days of issuance of summons" language.

Interpretation of G.S. 42-29.	Rules to Apply	Effect
If "excluding legal holidays" does apply to the "within five days" service requirement	<p>Rule 1 states "these rules shall govern...except when a differing procedure is prescribed by statute..."</p> <p>G.S. 42-29 prescribes a differing procedure than Rule 6(a), so G.S. 42-29 controls the timeline.</p>	G.S. 42-29 would exclude only legal holidays and not weekends.
If "excluding legal holidays" does NOT apply to the "within five days" service requirement	<p>No differing procedure is prescribed in G.S. 42-29.</p> <p>The timeline is computed by applying Rule 6(a) which states "When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation."</p>	Rule 6(a) would exclude both holidays and weekends.

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under Rule 6(a) not involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 31	January 1 New Year's Day	January 2 Summons issued by the clerk.	January 3	January 4	January 5	January 6
		Day 0	Day 1	Day 2	Day 3	
January 7	January 8 Day 4	January 9 Deadline by which the officer must serve the summons. Day 5	January 10	January 11	January 12	January 13

Application of G.S. 42-29's "within five days of issuance of summons" language calculated under Rule 6(a) involving a legal holiday.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 24	December 25	December 26	December 27	December 28 Summons issued by the clerk. Day 0	December 29 Day 1	December 30
December 31	January 1 New Year's Day	January 2 Day 2	January 3 Day 3	January 4 Day 4	January 5 Deadline by which the officer must serve the summons. Day 5	January 6

N.C.G.S. 42-29. Service of summons.

Questions and Discussion